



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MAHN  
ATTORNEY GENERAL

Honorable J. S. Murchison,  
Executive Director  
State Department of Public Welfare  
Austin, Texas

Dear Mr. Murchison:

Opinion No. O-1949

Re: Construction of S. B. 125,  
Regular Session 47th Legis-  
lature, with respect to the  
appointment of a guardian  
for an incompetent person.

Your letter asking an opinion upon the above sub-  
ject matter is before us, and reads as follows:

"Senate Bill 125, Acts of the 47th Legisla-  
ture, Regular Session, makes provision for the  
types of persons for whom a guardian may be ap-  
pointed, enumerating them as, ' . . . minors  
fourteen (14) years of age or over, persons al-  
leged to be of unsound mind or habitual drunkards,  
and persons for whom or for whose estates it is  
alleged to be necessary to have a guardian ap-  
pointed to receive funds from the State and/or  
Federal Government. . . . '

"The law makes further provision for the  
procedure to be followed in establishing the  
necessity for appointment of a guardian in order  
that the person may receive State and/or Federal  
funds.

"Senate Bill 125, Section 4, also makes pro-  
vision for the appointment of a successor guard-  
ian in the event the guardian dies, resigns, or is  
removed.

"The question has come before us in the case  
of an old age assistance recipient who on June 20,  
1918 was declared mentally incompetent and a guard-

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ian appointed for her. The guardian filed bond, inventory, appraisal and list of claims; however, so far as the records show the guardian did not make any other report to the Court or did not make final accounting. The guardian is dead, and our recipient, although still mentally incompetent has been receiving assistance in her own name for the past three or four years. It is admitted that she is still not competent to take care of her own affairs.

"Can the Court appoint a guardian upon the certificate of the Executive Director of this Department or his representative as provided for in Senate Bill 125? If so, is this guardian responsible for the entire estate of the recipient or just that particular part which she receives from the State and/or Federal Government? In other words, does the appointment of a guardian under Senate Bill 125 for the purpose of receiving Federal and/or State funds mean that the authority of a guardian so appointed is limited to the receipt and expenditure of the funds received from the State and/or Federal Government or is the guardian so appointed responsible for the entire estate.

"Since the person has not been actually adjudged incompetent, does the guardian have the authority to act in any respect other than for the purpose of receiving and expending these said funds?"

S. B. No. 125 is an amendment of various Articles of Revised Civil Statutes, 1925, under the provisions of which undoubtedly the County Court, having jurisdiction thereof, is authorized to appoint a guardian for one of unsound mind, when necessary to receive funds or money due from the State and/or federal government. (Arts. 4116, 4121, 4128 and 4272, as amended in S. B. 125).

It does not follow from this, however, that the appointment of a guardian of the incompetent's estate is limited to that part of the estate received or to be received from the State or the Federal Government.

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There is nothing in the amendment made by S. B. No. 125 to indicate that the guardianship of the estate granted because of the necessity therefor to receive such State or Federal aid, is other than a general guardianship of the incompetent's estate. The liability of the guardian and his bondsmen upon such letters would extend, therefore, not only to the moneys received from the State and/or Federal Government, but likewise to any other moneys, funds or property whatsoever owned by the ward.

In such a case the court may act upon the application of any one interested in the proceeding, including, of course, the Executive Director of your department.

Under the facts of your immediate case, it would not be necessary to institute a new guardianship proceeding, since a successor may be appointed under Article 4228 et seq of the Revised Civil Statutes.

Trusting that we have sufficiently answered your inquiries, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPROVED OCT 30 1942

*Gerald C. Mann*

ATTORNEY GENERAL OF TEXAS

